IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5922 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEHABEN D. THACKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5922 of 2003

MR NV ANJARIA for Petitioner No. 1-2

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondent No. 1,3

MR MD PANDYA for Respondent No. 2

NOTICE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 04/08/2004

ORAL JUDGEMENT

The petitioners seek permission to delete respondent no. 4. Permission granted. Respondent no. 4 stands deleted.

1. RULE. Service of rule is waived by learned A.G.P. Ms Maithili Mehta for respondents nos. 1 and 3 and by learned advocate Shri M.D. Pandya for respondent no. 2. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners are residents of Bhachau and they have been aggrieved by reconstitution of Final Plot No. 1307, in pursuance of Bhachau Town Planning Scheme No. 1.

3. Learned advocate Shri Anjaria appearing for the petitioners has submitted that the petitioners are sisters who were owners of land bearing Survey No. 2639 admeasuring 1747.05 sq meters. It is the case of the petitioners that except them, all other members of the family, in whose names, the said plot of land had been shown in the revenue record, expired at the time when the earthquake had taken place on 26th January, 2001. It has been submitted by him that before reconstituting the plot owned by the family members, no notice was given to the petitioners and the petitioners are also aggrieved because a portion of their original plot has been now reserved for the purpose of housing for Socially Economic and Backward Class people. It is also one of the grievances of the petitioners that the shape of the reconstituted plot is not regular.

4. It appears that the names of the petitioners were not shown as owners in the revenue record and possibly for that reason no opportunity was given to the petitioners, though notices had been issued in the name of the owners of the plot in question, namely, the parents of the petitioners, who unfortunately expired due to the earthquake.

5. Looking to the peculiar facts of the case, and more particularly when the owners of the property were not heard and did not get any opportunity to represent their case before the authority, the learned advocate has submitted that the petitioners would like to make a representation to the State of Gujarat through respondent no. 2 under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the "Act") so that their case can be considered for variation of the scheme.

6. The aforestated request being reasonable, it is directed that if the petitioners make a representation to the State of Gujarat through respondent no. 2 by filing an application for variation of the scheme, the said application, alongwith the report of respondent no. 2, shall be considered by the State of Gujarat under the provisions of the Act.

7. In pursuance of the aforestated direction given by this Court, learned advocate Shri Anjaria would not like to press this petition. The petition stands disposed of as not pressed. Rule is discharged with no order as to costs.

(A.R. DAVE, J.)

siji